IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 15 of 2002
with
Civil Application No. 1247 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GSRTC
Versus
SHANTILAL D TRIVEDI

Appearance:
1. Second Appeal No. 15 of 2002
MR ASHISH M DAGLI for Appellant No.
MS NIRALI B MUNSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 20/04/2005

ORAL JUDGEMENT

1. Instant appeal under Section 100 of the Code of Civil Procedure is directed against the judgment and

decree dated 24.8.2001 rendered in Regular Civil Appeal No.99 of 1999 (27/94) by the learned 2nd Joint District Judge, Veraval by which the appeal filed by the appellants has been dismissed and thereby the judgment and decree dated 27.12.1993 recorded in Regular Civil Suit No.139 of 1993 by the learned Civil Judge (J.D.)., Una decreeing the suit filed by the respondent against the appellants came to be affirmed.

2. The respondent was at the relevant time serving as a bus conductor in the Gujarat State Road Transport Corporation. During the surprise checking by the checking squad, he was caught red handed for not issuing tickets to passengers after collecting fares from them and therefore departmental inquiry was initiated against him. In the said departmental inquiry he was found guilty. Therefore, he was removed from service. The said order was confirmed by the Assistant Labour Commissioner. The respondent therefore filed the suit for declaration that the order of dismissal dated 4.5.1993 passed in the departmental inquiry No.38 of 1981 was null and void and therefore it was prayed to resinate him in service with immediate effect with full backwages.

3. The suit was contested by the appellants by filing written statement. The learned trial Judge on appreciation, evaluation and analysis of the evidence, came to the conclusion that the departmental inquiry was null and void and therefore it was ordered to reinstate the respondent in service with immediate effect with all consequential benefits from the date of dismissal from service.

4. The appellants aggrieved thereby carried the matter to the District Court by filing Regular Civil Appeal No.99 of 1999 (27/94). The learned Joint District Judge who heard the appeal has dismissed the same which has given rise to this Second Appeal at the instance of the original defendants.

5. The appeal has been admitted by this Court vide order dated 15.2.2002 on the following substantial questions of law:

(1) Whether, in the facts and circumstances of the case, the Courts below have erred in holding that the Civil Court had jurisdiction to entertain the suit?

(2) Whether the Courts have erred in holding that the dismissal order is illegal?

(3) Whether the Courts have erred in granting the relief of reinstatement?

6. This Court has considered the submissions advanced by Mr. Ashish Dagli, learned advocate for the appellants and Ms. Nirali Munshi, learned advocate for the respondent.

7. This Court finds that the basic premise of decreeing the suit and upholding the same in appeal is incorrect. It was not incumbent upon the departmental authorities to examine the passengers. In matter like the present where conductors are being proceeded against on the allegation of non-charging of fares and non-issuance of tickets, it is well nigh impossible at the later time to secure the presence of those passengers. It is for this reason that the inspection report and the testimony of the inspector was relied upon. The fact that it was not incumbent in the departmental proceedings like this to ask the passengers to depose has been laid down by the Supreme Court in the case of State of Haryana and another v. Rattan Singh, AIR 1977 SC 1512. Further more, the Supreme Court has in Karnataka State Road Transport Corporation v. B.S. Hullikatti (2001) 2 SCC 574, held that that in cases like the present where a bus conductor while charging from the passengers does not deposit with the appellant the fare so collected, should be regarded as being guilty of gross negligence. The primary duty of the conductor is to realise the fare and not doing so and allowing the passengers either to travel free of charge or by realising less charges and not depositing the fare with the Transport Corporation, cannot be taken lightly.

8. For the aforesaid reason, the conclusion of the courts below in decreeing the suit and affirming the same was incorrect.

9. It is also required to be noticed that the dispute in the present case does not involve any general law of contract. It only arises out of the rights or obligations created by the Industrial Disputes Act and therefore also the courts below have wrongly exercised its jurisdiction and it has to be held that the Civil Court had no jurisdiction to decide the question posed for determination before it.

10. It is settled by the Supreme Court in catena of decisions that in such cases appropriate remedy is to approach the forum created under the Industrial Disputes

Act, that is, Industrial Tribunal and jurisdiction of Civil Court is absolutely barred.

11. For the foregoing reasons, all the substantial questions of law formulated at the time of admitting this appeal are required to be answered accordingly i.e., in favour of the appellants and against the respondent by holding that the Courts below have erred in holding that Civil court had jurisdiction to entertain the suit; dismissal order was illegal and also granting of relief of reinstatement.

12. Seen in the above context, the judgment and decree recorded by the learned trial Judge and confirmed by the learned Joint District Judge are required to be quashed and set aside by allowing this appeal.

13. For the foregoing reasons, the appeal succeeds and accordingly it is allowed. Judgment and decree dated 27.12.1993 passed by the trial court in RCS No. 139 of 1993 and affirmed by the learned 2nd Joint District Judge, Veraval, vide judgment and decree dated 24.8.2001 in RCA No.99/99 (27/94) are hereby quashed and set aside, the result of which would be the suit filed by the respondent shall stand dismissed. No costs throughout.

14. Since the appeal is allowed, Civil Application No.1247 of 2002 filed for stay of the impugned judgment and decree does not assume any survival value and hence the same is rejected. Rule is discharged with no order as to costs.

(A.M. Kapadia, J.)

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